United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF & APPENDIX

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75-7340

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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75 - 7340

LESLIE CANTY, JR.,

Plaintiff - Appellant

-against-

THE BOARD OF EDUCATION et al

Defendants - Appellees

BRIEF + Appendix

LESLIE CANTY, JR
301 West 150 Street
Apartment 4-6
New York, New York 10039
Pro Se

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

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75 - 7340

LESLIE CANTY, JR.,

Plaintiff - Appellant

-against-

THE BOARD OF EDUCATION et al

Defendants - Appellees

On appeal from the United States District Court for the Southern District of New York

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BRIEF OF PLAINTIFF- APPELLANT

This is an appeal by the plaintiff-appellant, Leslie Canty, Jr., from a decision entered upon motion for reargument against the appellant by the Honorable Lawrence W. Pierce in the United States District Court for the Southern District of New York on February 6, 1975.

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JURISDICTION

Jurisdiction is under the civil right ststue 42 U.S.C. 1981, 1983 and 1985 in which this Court has jurisdiction under 28 U.S.C. 1343 (3) and (4), also 2201, 2202, The Civil Rights Act of 1964 Title VII, Article III, Section II and the Fourteenth Amendment of the United States Constitution.

ISSUES OF APPEAL

I.

This cause of action should not considered to be res judicata when appellees gave their facts and conclusion of in which they have made moot.

II.

Appellant should be entitled to employment with the Board of Education when they have violated his rights.

STATEMENT OF THE CASE

This cause of action is being commenced Pro Se again because of the issues involved within this case. The appellant is basing his claim on the ground that the previous action did not exist in facts and appellees refuse to comply with the minimum standard of fair requirements in the field of employment. The primary concern of this case is based upon Lombard v. The Board of Education, 502 F. 2d 631 (2d Cir. 1974).

I.

We do not think that this case should considered to be res judicata because of the issues involved and the merits of this cause of action. According to the decision of Canty v. Board Of Education, 470 F. 2d 1111(2d Cir. 1972), this was not a final decision based on the finding of the Court. It was admitted in Lombard v. Board of Education, supra, that Canty had been violated of his rights and harm was done to his name in his chosen profession.

We think that appellant too should have his day in Court. In Harrison v. Bloomfield Industries, Inc., 435 F. 2d 1192 (6th Cir. 1970), we take notice that this case was permitted before a trial Court. Pam American Match Inc., v. Sears Roebuck And Co., ____ _____ Was decided before Superior Court which said, "Just compensation as determine in the condemnation action was paid plaintiff." Compare Clarke v. Redeker, 259 F. Supp. 117 with Canty v. Board of Education, supra. Taken under consideration these two cases and including Lombard v. Board of Education, supra, you can distinguish between the three. Appellant case was dismissed and he was not afforded a trial type hearing. The Court said, in Clarke v. Redeker, supra, an action in a federal court, "a plaintiff suing under the provision of 28 U.S.C. 1343 for a deprivation of civil rights is not required to exhort state administrative remedies if his claim is based on federal law."

In Saylor v. Lindsley, 391 F. 2d 965 (2nd Cir. 1968), the Court said in part, "The requirement that a judgement, to be res judicata, must be rendered "on the merits" guarantees to every plaintiff the right once to be heared on the substance of his claim. Thus, ordinary, the doctrine may be invoked only after a judgement has been rendered which and determ[illegible]ne real or substantial grounds of action or defense as distinguished from matters of practice procedure, jurisdiction or form."

In some rational way appellees have used all types of schemes to avoid facing the issues of accepting appellant by saying "he has no job right" and he can teach because we did not terminate his license. The idea of appellees to hold that appellant has not been deprived of his license to teach, nor has his reputation or ability to engage in his profession been destroyed. We do not see how the Court can continue to deny this fact with appellant and has already acknowledged in Lombard v. Board of Education, supra. This should not be mistaken again knowing that some wrong has been committed and now is the time for such change to occur. How is it possible for appellant to establish himself when the idea of trying to succeed has been defeated by both appellees and even this Court. The key to this question remain within the authority and jurisdiction of the same, both appellees as well as this Court.

II.

Appellant can not be compared, Coogan v. Cincinnati Bar Association, 431 F. 2d 1209, 1211 (6th Cir., 1970), because of the cause of action. Coogan was merely suspended of practice for six months with the Cincinnati Bar Association. Appellant was dismissed and has never been afforded reemployment. Nor did appellant refuse or ignore any request by appellees, rather, he was dismissed without given any opportunity or chance to prove himself or to show that appellees were wrong. Appellant should be given a chance to challenge appellees for their wrong action against him.

Appellees did not have the right to terminate appellant by using the method and schemes as they did. Yes, they had the authority and used it in the wrong direction. We firmly think that appellant should have a right to some type of remedy to recover a wrong that has been inflicted upon him.

Appellant believe that he is entitled to reinstatement as a teacher or in some other position with the Board of Education because of violations against appellees. They are violating in part Title VII of the Civil Rights Act. It is wrong and a violation to discriminate in the area of hiring employees. If the ratio is not considered to be fair it is up to appellees to provide means and ways to adjust and adapt fair

procedures by changing the the ways of adjustment by balancing the ratio between employers-employees as well as students. In making this observation we will take a glance at the over-all number of black teachers as compared with white teachers. There are more than 45,000 white tecahers and less than 8,000 black teachers. In comparing black male with female the ratio is more than two to one females. In comparing teachers wit students there are more than 60% per cent black and spanish speaking students which make up the total number of students in the school system.

Appellant should be given the same chance as Lombard because of the inequalities within our system and society. In Tutt v. Doby, 459 F. 2d 1195 (D.C. 1972), the Court said, "as we have already brought out, the issue of rental due was not really "before" the trial court, an in no substantial sense could it be said to have been "necessary determined" within the doctrine that once turned on that concept. The rule requiring reversal is intertwined with, and is given support and perspective by the doctrine that collateral estoppel essentially applies only to matters actual litigated and determined in the first action." It seem very strange that in each of the decesion of appellant they were different. At this time we will not discuss that difference.

Again, we will ask this question, what good is it for

Appellant to have license to teach and appellees have denied and deprived him of that right to teach? When speaking of a Right, we are speaking of what is fair and just. We think that this court can answer this question better than we. See, Flynn v. State, 418 F 2d 668 (9th Cir., 1959) This case involved state proceeding and the plaintiff license was only suspended.

CONCLUSION

For the forgoing reasons, the District Court's judgment dismissing the complaint should be reversed and this action be remanded for trial and such other relief as may be appropriate.

Respectfully submitted,

LC/glc
cc

Leslie Canty, Jr.

ENDORSEMENT ORDER

Again insisting that he was entitled to a full trial-type hearing before he could be discharged as a regular substitute teacher by the New York City Board of Education, the plaintiff has filed the motion herein to reargue this Court's determination that he was precluded from raising such a claim by the doctrine of res judicata. In Canty v. Board of Education, 470 F.2d 1113 (2d Cir. 1972) the Second Circuit squarely held that the plaintiff was not entitled to a full trial-type hearing. This being the case the plaintiff may not litigate the same issue in this Court.

The motion to reargue is hereby denied.

SO ORDERED.

Dated: New York, New York
February 4, 1975

LAWRENCE W. PIERCE
U. S. D. J.

CIVIL DOCKET
ITED STATES DISTRICT COURT

Jury demand date:

110 St.

J. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
LESLIE CANTY, JR.	For plaintiff: Leslie Canty Jr. (Pro Se) 301 W. 150 th St. Apt.4-6 N.Y.C.
-vs-	
THE BOARD OF EDUCTION OF THE CITY OF NEW YORK	For defendant:

STATISTICAL RECORD	COSTS	DATE	NAME OR RECEIPT NO.	REC.	DISB.
J.S. 5 mailed x	Clerk	JUN 24 1974	FD		
J.S. 6 mailed ✓	Marshal				
Basis of Action: Civil Rights	Docket fee				
	Witness fees	JUN 12 1975			
Action arose at:	Depositions				

... Bd. of Ed. of N.Y.

74 CV. 2697

PROCEEDINGS	Date Order or Judgment
[illegible] Filed complaint and issued summons.	
[illegible] Filed order granting leave to proceed in forma pauperis---Edelstein, Ch. J.	
[illegible] Filed Summons and marshals ret. Served: Board of Education on 8/5/74.	
[illegible]-3-74 Filed deft's notice of motion to dismiss-Ret. 9-6-74.	
[illegible]-3-74 Filed deft's memorandum in support of motion to dismiss.	
[illegible]-4-74 Filed pltff's affdvt in opposition to deft's motion to dismiss.	
Sep. 16-74 Filed pltff's answer and brief.	
Dec. 4-74 Filed pltff's additional pleading & affdvt.	
Dec. 31-74 Filed memo endorsed on motion filed 9-3-74--Motion to dismiss is granted-So Ordered Pierce, J. Notice mailed by [illegible] Clerk.	
Jan. 9-75 Filed JUDGMENT-Deft. have judgment against the pltff. dismissing the complaint-Clerk. Mailed notices.	
Jan. 10-75 Filed pltff's motion for reargument.	
Jan. 15-75 Filed pltff's supplemental pleading for reargument.	
Jan. 22-75 Filed deft's affdvt in opposition to motion for reargument.	
Jan. 22-75 Filed deft's memorandum in opposition to motion for reargueme	
Jan. 28-75 Filed pltff's affdvt submitted as an answer and in opposition to deft's affdvt. dated 1-16-75.	
Jan. 28-75 Filed pltff's answer to memorandum of law & motion for reargument.	
Feb. 6-75 Filed memo endorsed on motion filed 1-10-75--Motion to reargue is denied. So Ordered--Pierce, J. Mailed notice	
May 29-75 Filed pltff's application for leave to appeal in forma pauperis.	
May 29-75 Filed memo endorsed on application for leave to appeal in forma pauperis. Motion granted. So Ordered--Pierce, J. Mailed notice	
May 29-75 Filed pltff's notice of appeal from order entered Feb.1975 by Judge Pierce. Mailed copy to Corp. Counsel, Municipal Bldg. N.Y.C. 10007	

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [signature]
Deputy Clerk